89-626

No. 89

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

KENNETH F. FOX, DONNA L. BANKS, and
ROBERT FAND,
PLAINTIFFS-PETITIONERS

V.

STATE OF CONNECTICUT,
DEFENDANT-RESPONDENT

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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34 pp

QUESTIONS PRESENTED

1. Can the State of Connecticut invoke its Eleventh Amendment right to immunity to abrogate our "inverse condemnation" claim as clarified by Fitzpatrick V. Bitzer, 49 L Ed 2d, 614-624,427 U.S. 445,456,(1976),and as empowered by Section Five of the Fourteenth Amendment? Do the previous judgements set a very dangerous precedent in this matter by abrogating our 14th Amend. cause of action?

2. Must our Party show poverty in order to have our Motion for appointment of Counsel approved,if we are a Political Party controlled by the Rules of Agency and as such are not joint and severally liable?

3. Does the statement by the State of Connecticut made in the Ct. Claims Commission, that we may raise the constitutionality and legality of the name change in the Courts directly and the taking issue raised as well, constitute culpable duplicity and a clear waiver of immunity ?

4. Can an"inverse condemnation" suit in alleging a failure of due process, a fourteenth amendment right, in this ind ividual instance, enable us to use 42 U.S.C. § 1983 as a part of the enabling legislation of Section Five of the Fourteenth Amendment and allow abrogation of the State's Eleventh Amendment immunity and thus allow punitive and exemplary damages in addition to just compensation?

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

No. 89-

KENNETH F. FOX, DONNA L. BANKS, and ROBERT FAND,

PLAINTIFFS-PETITIONERS

V.

STATE OF CONNECTICUT,

DEFENDANT-RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONERS KENNETH F. FOX, DONNA L. BANKS, AND ROBERT FAND PETITION THE COURT TO ISSUE A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT IN THIS CASE.

JURISDICTION

The judgement of the Court of Appeals was filed on Spetember 19,1989 and is set forth at A1-4 . The Supreme Court has jurisdiction in that this is an appeal from the U. S. Court of Appeals.

OPINIONS BELOW

The decision of the District Court is reported, and is set forth at pages A5 to A11 of the appendix to this petition (App. A 5 to A11). The decision of the Court of Appeals, affirming the District Court was designated not for publication and is set forth at App. A 1 to A4 .

PRELIMINARY STATEMENT

We unequivocally declare we do not intend to amend the proceedings in the U. S. District Court, Bridgeport, Ct. and in the U. S. Court of Appeals, for the Second Circuit. We will attempt to reiterate and summarize arguments already submitted, for use by the U. S. Supreme Court. Further, we maintain that our case, containing constitutional and statutory issues has not been ruled to be frivolous and that Judge Daly and the U. S. Court of Appeals,

for the Second Circuit, has erred in the interpretation of certain constituional and statutory issues. If such interpretations are allowed to stand serious and dangerous constitutional precedents may be established. This is especially the case in question one in this brief. We ask the Supreme Court to judge each of the following four questions individually on their own merit, separately and distinct from each other.

I.

STATEMENT OF CASE AND ARGUMENT PERTAINING TO SECTION FIVE OF THE FOURTEENTH AMENDMENT AS IT RELATES TO FITZPATRICK V.BITZER

On 2/25/88 the plaintiffs in this case filed a complaint in the U. S. District Court Bridgeport, Ct.,BB-147,D.E.#1. Our complaint arose out of the enactment by the Ct. General Assembly of a statute, Public Act 87-472, cancelling the use of our Political Party name "Unaffiliated" Party of Ct. and out of the contention that the statute has resulted in an "inverse condemnation" in violation of the fifth amendment as applied against the states

by the fourteenth amendment. We, the plaintiffs asked for just compensation and monetary relief for property, damages, injury,costs, interest, attorney fees if any, etc. as provided for by the fifth amendment as applied against the states by the fourteenth amendment and/or by Section one of the fourteenth amendment, and punitive damages and exemplary damages where provided for by the first and/or fourteenth amendment and/or by the Civil Rights Act, 42 U.S.C. Sect.1983. See D.E.#1, pp.1,2.See D.E.#7, Motion To Dismiss the Motion To Dismiss,p.5. See also D.E.#19,Motion To Correct Record, regarding the wording of our claim, to note the word or in the phrase and/or in Judge Daly's Ruling on the Defendent's Motion To Dismiss, D.E.#16p.1,so as to allow separate consideration of each of the individual constitutional and/or statutory claims and causes of action.

On 5/17/88 Judge Daly ruled to grant the Defendent's Motion To Dismiss and ruled that the State's eleventh amendment right is not

abrogated by our claim as noted heretofore. See D.E.#16. Judgement to dismiss our claim was filed on 5/18/88. See D.E.#17.

ARGUMENT REGARDING SECTION FIVE OF THE FOURTEENTH AMENDMENT AS CLARIFIED BY FITZPATRICK V. BITZER

On 5/17/88 Judge Daly ruled that the State of Ct.'s eleventh amendment immunity is not abrogated by our claim. See D.E.#16. This ruling noted, "Moreover, Congress may abrogate the state's eleventh amendment immunity by exercising its power under Section five of the fourteenth amendment.Fitzpatrick V. Bitzer, 427 U.S. 445,456(1976). However Congress's intention to abrogate the state's eleventh amendment immunity must be clearly expressed, Quern V.Jordan,440 U.S.332,345 (1979), and section 1983 does not provide such an abrogation. Id. at 340-45;Edelman, 415 U.S. at 675-77."D.E.#16.We consider this judgement a gross misinterpretation of constituional law which sets a dangerous precedent.Is not "inverse condemnation" one of the rights secured by Section five of the

fourteenth amendment? If so,does not the ruling in Fitzpatrck V. Bitzer cover our claim?

We ask the U. S. Supreme Court to reverse Judge Daly's Ruling and Judgement to dismiss our complaint, D.E.#s16,17, for the particular reasons cited in our Motion to Dismiss The Motion To Dismiss, D.E.#7.

In particular we ask the Supreme Court to examine our discussion regarding the role and relevance of the rulings in Fitzpatrick v. Bitzer,supra. which clarify previous rulings so as to allow our "inverse condemnation" complaint,which we claim is a Section five of the fourteenth amendment enabled right,to abrogate the state's eleventh amendment immunity claim,as is claimed in this suit by the State of Connecticut. To allow Judge Daly's ruling to stand would destroy a key element in the Fitzpatrick v. Bitzer ruling. Judge Daly chose to avoid our fourteenth amendment cause of action, ignored our Fitzpatrick v. Bitzer argument, AND CHOSE INSTEAD TO RULE SOLELY ON THE BASIS THAT ONE OF OUR CAUSES OF

ACTION, 42 U.S.C. Sect. 1983, "does not provide such an abrogation", of the state's eleventh amendment immunity and cited Edelman, supra, and Quern v. Jordan, and ignored Fitzpatrick which your Court utilized to clarify Edelman and Quern. Your Court has indicated a State can be sued for monetary relief in a circumstance such as ours, that is, an "inverse condemnation" suit. See Fitzpatrick V. Bitzer, supra., see also, D.E.#1, p3, for the discussion of S.C.Opinion Cit.85-1199, First Evangelical Lutheran Church of Glendale v. County of Los Angeles, 55LW 4781-4789, setting forth your decision that a state can be sued for monetary relief in an "inverse condemnation"suit.

The essential and dangerous fault in Judge Daly's judgement is that Judge Daly has singled out JUST ONE OF OUR FILED CAUSES OF ACTION instead of considering all of our causes of action, especially OUR FOURTEENTH AMENDMENT CAUSE OF ACTION RELATING TO, Fitzpatrick v. Bitzer, that is that a Section five of the

fourteenth amendment cause under which "inverse condemnation" suits can fall. Your Court's ruling in Fitzpatrick set a precedent under which"inverse condemnation" is one of rights enabled by Section five of the fourteenth amendment, such section five enabling the other four sections of the fourteenth amendment. See Fitzpatrick v. Bitzer,supra, Headnotes:States Sect.88-immunity from suit,Constitutional Law Sect. 34-fourteenth amendment State Sect.87-immunity from suit. Also, note D.E.#7,p.5, first paragraph-concept of the "threshhold fact of Congressional authorization" which was clearly"absent in Edelman". The main rulings above are threatened if this judgement is allowed to stand.

II.

STATEMENT OF CASE AND ARGUMENT REGARDING MOTION FOR APPOINTMENT OF COUNSEL

A Motion For Appointment of Coun sel,under 28 U.S.C. 1915, was filed on 2/25/88,D.E.#2, and was granted by Judge Daly on 5/24/88,D.E. #2. However, on 4/5/88, the Defendant filed a letter of objection to such grant of counsel

because such motion was not served upon the Defendant, D.E.#9, and on 4/7/88 Judge Daly vacated such grant of counsel without prejudice to renew the motion for appointment of counsel upon proper service of the defendant. On 4/18/88 we filed a motion for appointment of counsel, D.E.#11, together with a financial affidavit of the assets of our Political Party. D.E.#12. On 5/6/88 the Defendant filed an objection to the Motion For Appointment Of Counsel, D.E.#14. On 5/16/88, Judge Daly ruled on Plaintiff's Motion For Appointment Of Counsel D.E.#15, stating on pp.2,3,"This Court is persuaded that under the appropriate circumstances, an artificial entity may proceed in forma pauperis and counsel may be appointed for such an entity"...Judge Daly then noted, "The motion for appointment provides financial information for the Party and not for its members. Accordingly,, the motion is DENIED without prejudice to renew on a proper showing of poverty".

ARGUMENT

The defendant's Letter Of Objection To Grant Of Counsel D.E.#9, notes on p.2,"Further as an unincorporated association the Independent Party and its members are jointly and severally liable for the debts of the organization. This is fully discussed in 6 Am.Jur. 2d Associations and Clubs Sect. 46. There is no showing that the individual plaintiffs are indigent". However, this quote is found on p. 478,6 Am. Jur.2d Associations and Clubs Sect. 46 and applies only if the association is for profit. However, our Political Party is not for profit. Further, on the next page,p. 479, see D.E.#11,p.E, it is noted that Political associations are controlled by the rules of agency and as such its members,"are not bound by any obligation incurred by or on behalf of the association without their consent or subsequent ratification". Therefore we ask your court to reverse Judge Daly's ruling and the affirmation of the court of appeals on this issue requiring a show of

poverty by the members of our Political Party before there is a grant of counsel, for the reason that we are a political association, not for profit, controlled by the rules of agency and as such, the members are not joint and severally liable without their consent or subsequent ratification. SeeD.E.#11,p.E, for our full argument.

III.

STATEMENT OF CASE AND ARGUMENT RELATING TO CT. CLAIMS COMMISSION REGARDING THE QUESTION OF WAIVER OF IMMUNITY

STATEMENT OF CASE

On 10/30/87 the plaintiffs filed this inverse condemnation suit with the Ct. Claims Commission. See D.E.#7,pp13,14. On the basis of a Motion To Dismiss filed by the Defendant the State of Ct., on 12/30/87, the Ct. Claims Commissioner dismissed the Case, Claim 9888, on the basis of lack of jurisdiction. At the hearing, prior to rendering of this decision, we the plaintiffs concurred with the defend-ant,State of Ct.,with the specific under-

standing, that we MAY raise the constitutionality and legality of the name change, "in the courts directly and the taking issue raised as well". See D.E.#7,pp13,14, and related exhibits 5,5a,5b,5c,5d. In our Motion To Dismiss The Motion To Dismiss, we submitted that this representation made in the Ct. Claims Case 9888 in effect constitutes a clear waiver of immunity directly applying to our case B88-147 for all our claims of constitutional and civil rights violations. See D.E.#7,p14. Judge Daly ruled that,"The State's submission in the proceedings falls far short of the requirement that waiver must be shown "by the most express language or by such overwhelming implication from the text that (will) leave no room for any other reasonable construction". Edelman, 415 U.S. at 673(quoting Murra y v.Wilson Distilling Co.,213 U.S.151,171(1909).Because there is not clear expression of the State's waiver of congressional abrogation of eleventh amendment immunity, the motion is hereby GRANTED, and plaintiff's complaint is DIS-

MISSED without prejudice to replea d." D.E.#16 pp.2,3. In our appeal to the Second Court of Appeals we unequivocally declared no intention to amend our complaint and was judged, the appeals court affirming the judgement.

ARGUMENT

The statement made by the Defendent, the State of Ct., in the Ct. Claims Commission was as follows:"The Commissioner is not to make awards himself against the State where it is 'otherwise authorized by law'. Ct.Gen.Stat.Sect 4-142(2). Here, the contentions of claimants regarding the constitutionality and legality of the name change may be raised in the state and federal courts over this issue of the choice of Party name. Cf. Bachrach v. Secretary of the Commonwealth...". We, the plaintiffs, in good faith in a court of law, had acquiesced to the dismissal of the complaint Case #9888, Ct. Claims Commission, with the specific acknowledgement of the State of Ct.'s representation that, "Here the contentions of the claimants MAY be raised in the courts dir-

ectly and the taking issue raised as well". The word"MAY" is one of permission.See D.E.#7 pp.13,14. We submit to your court that by "overwhelming implication from the text that leaves no room for any other reasonable construction" the State of Ct. overwhelmingly implied a waiver of immunity. in the Ct. Claims Co mmission court.

The State of Ct., by changing this representation later in the U.S.District Court, Brideport,Ct. Case #b88-147, to a representation of a cloak of immunity made a willful misrepresentation of a previous representation made in the Ct. Claims Commission.

For the above reasons we therefore ask your court to reverse Judge Daly's ruling on this question and the affirmation on this question by the U.S.Court of Appeals for the Second Circuit. We ask your court to consider this question separately from the other questions of law raised in this brief.

IV.

THE QUESTION OF 42 U.S.C. Sect.1983 VS. STATE IMMUNITY

The last question we ask your court to rule on as a separate and distinct question is, "Can an 'inverse condemnation' suit alleging FAILURE OF DUE PROCESS, a FOURTEENTH AMENDMENT RIGHT, place 42 U.S.C.Sect.1983 under the enabling legislation of Section five of the fourteenth amendment, such section five of the fourteenth amendment having been ruled on in Fitzpatrick v.Bitzer,supra,as abrogating the State's eleventh amendment; thus in turn abrogating the State of Ct.'s claim of immunity over 42 U.S.C.Sect.1983 and thus allowing punitive and exemplary damages? See Edelman,supra, and Quern v. Jordan,supra, D.E.#16,p.2,D.E.#1,pp.27,28 for the discussion of the taking of our property without just compensation and WITHOUT DUE PROCESS , as it applies to the Civil Rights Act 42 U.S.C.Sect. 1983. Section five of the fourteenth amendment states,"The Congress shall have the power to enforce, by appropriate legislation, the pro-

visions of this article", and Section one of the fourteenth amendment requires the States to provide "DUE PROCESS". DUE PROCESS is an integral part of 42 U.S.C.Sect.1983.

In summation, "Can an 'inverse condemnation' suit alleging a failure of due process, a fourteenth amendment right, and one addressed by 42 U.S.C.Sect.1983 as well, be viewed as part of the enabling legislation of Section five of the fourteenth amendment and thereby allow abrogation of the State's eleventh amendment claim of immunity, through the clarification in Fitzpatrick, and thereby allow punitive and exemplary damages.

CONCLUSION

The petition for writ of certiorari should be granted and the judgements of the U.S.Court of Appeals for the Second Circuit and the U.S. District Court,Bridgeport,Ct. be reversed with instructions to the U.S. District Court, Bridgeport,Ct.

CERTIFICATE OF SERVICE

We hereby certify that two (3) copies of the foregoing PETITION FOR WRIT OF CERTIORARI, was mailed first class, postage prepaid, this 14 day of OCT, 1989. to

Henry S. Cohn, Assitant Attorney General, 55 ELM Street, Hartford, Ct. 06106.

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APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
CITY OF NEW YORK
FILED September 19,1989

Before
Honorable Ellsworth A Van Graafeiland
Honorable Thomas J. Meskill
Honorable Amalya L. Kearse,
Circuit Judges

Kenneth F. Fox, Donna L. Banks and Robert Fand,

Plaintiffs-Appellants,

V. Docket No.88-7424

States of Connecticut,

Defendants-Appellee.

This a pro se appeal from a judgement entered in the United States District Court for the District of Connecicut, Daly,J., dismissing plaintiff-appellants' complaint filed pursuant to 42 U.S.C. Sect.1983. Appellants contend that the enactment of Conn. Gen. Stat. 9-453(u)(c), which proscribes, inter alia,the use of the "unaffiliated" political party designation, constituted an "inverse condemnation" of their prop erty in violation of the First, Fifth, and Fourteenth Amendments.

This cause came on to be heard on the transcript of record from said district court and was taken on submission.

The judgement of the district court is AFFIRMED substantially for the reasons set forth in Judge Daly's Ruling on Defendant's Motion to Dismiss, dated May 17,1988.

N.B.This summary order will not be published in the federal reporter, and should not be cited or otherwise relied upon in unrelated cases before this or any other court.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
CITY OF NEW YORK
Filed July 12,1989

Before
Honorable Wilfred Feinberg
Honorable William H. Timbers
Honorable Frank X. Altimari,
Circuit Judges

Kenneth F. Fox, Donna L. Banks and Robert Fand,
Plaintiffs-Appellants,

V. Docket No. 88-7424

State of Connecticut,
Defendants-Appellee.

A petition for rehearing having been filed herein by plaintiffs-appellants, Robert Fand, Kenneth F. Fox, and Donna L. Banks, containing an unequivocal declaration that plaintiffs do not intend to amend the pleadings in the district court, and a response to the petition having been filed by defendent-appellee, State of Connecticut.

Upon consideration by the panel, and on the authority of Connecticut National Bank v.Fluor Corp. 808 F.2d 957,960(2d Cir.1987), it is ordered that such petition for rehearing is granted. This court's order of dismissal, dated March 1,1989, is hereby withdrawn. The appeal will be scheduled to be heard by a regularpanel

of this court in due course, and the parties will be notified of the briefing schedule by the Clerk of the Court.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
CITY OF NEW YORK
Filed March 1, 1989
Before
Honorable Wilfred Feinberg
Honorable William H. Timbers
Honorable Frank X. Altimari,
Circuit Judges

Kenneth F. Fox, Donna L. Banks and Robert Fand,
Plaintiffs-Appellants,

V. Docket No. 88-7424

State of Connecticut,
Defendants-Appellee.

Judge or agency whose order is being appealed:

Hon. T. F. Gilroy Daly, Chief U. S.District Judge, District of Ct.

Brief statement of the relief requested:

Dismiss Appeal.

It is hereby ordered that the motion is granted. Since the district court granted leave to re-plead, the order appealed from is not a final order.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT
BRIDGEPORT, CONNECTICUT
Filed May 17, 1988
Before
Honorable T.F. Gilroy Daly, CH.U.S.D.J.

Kenneth F. Fox, et al,
Plaintiffs

V. Civil No.B-88-147(TFGD)

State of Connecticut,
Defendant.

RULING ON DEFENDANT'S MOTION TO DISMISS

Plaintiffs have brought the above-caption ed action seeking money damages from the defendent State of Connectcut. Although named as plaintiffs are three, individuals, the complaint makes clear that the action is brought on behalf of the Independent Party of Connecticut, an unincorporated association formerly known as the Unaffiliated Party of Connecticut. See Ruling on Plaintiffs' Motion for Appointment Of Counsel AT 1 (May 16,1988). The action appears to arise out of the enactment by the Connecticut General Assembly of a statute proscribing the use by political parties of certain names, including "unaffiliated." Conn. Gen. Stat. Sect. 9-453u(c). Plaintiffs contend

that the statute has resulted in an "inverse condemnation" of the use of the former name of their party in violation of the fifth and fourteenth amendments and 42 U.S.C. Sect. 1983. The complaint also alleges violations of plaintiffs' rights to expression, association, and equal protection protected by the first and fourteenth amendments. The State has filed a motion to dismiss, claiming immunity under the eleventh amendment.

Absent consent to such suits, states are immune under the eleventh amendment to suits brought for money damages in federal courts. Edelman v. Jordan, 415 U.S. 651, 663 (1974); Hans v. Louisiana, 134 U.S. 1 (1890). Although states may waive their immunity under the eleventh amendment, the waiver must be unequivocally expressed. Atascadero State Hospital v. Scanlon, 105 S.Ct. 3142, 3146 (1985). Moreover, Congress may abrogate the states' eleventh amendment immunity by exercizing its power under Sect. 5 of the fourteenth amendment. Fitzpatrick v. Bitzer, 427 U.S. 445, 456 (1976). However, Congress's inten-

tion to abrogate the states' eleventh amendment immunity must be clearly expressed, Quern v.Jordan,440 U.S.332,345 (1979), and Sect.1983 does not provide such an abrogation. Id. at 340-45; Edelman,415 U.S. at 675-77.

The State of Connecticut has not indicated its consent sufficient to waive its eleventh immunity. Plaintiffs rely on a submission by the State in proceedings before the State Claims Commissioner as a demonstration of the State's waiver of its immunity under the eleventh amendment. See Plaintiffs'Exh.5c.[1]. The State's submission in the proceedings falls far short of the requirement that waiver must be shown "by the most express language or by such overwhelming implication from the text that (will) leave no room for any other reasonable construction".Edelman,415 U.S. at 673

[1] Plaintiffs appear to rely on a reference in the States's Motion to Dismiss before the Claims Commissioner to cases brought in certain state and federal courts involving claims about a political party's name. See Plaintiffs Exh.5c at 4.

(quoting Murray v. Wilson Distilling Co. ,213 U.S.151,171(1909). Because there is no clear expression of the State's waiver of congressional abrogation of eleventh amendment immunity, the motion to dismiss is hereby GRANTED, and plaintiffs' complaint is DISMISSED without prejudice to replead.

SO ORDERED.

Dated at Bridgeport,Ct. this 17 day of May,1988.

T.F. Gilroy Daly,CH.U.S.D.J.

UNITED STATE DISTRICT COURT
DISTRICT OF CONNECTICUT
BRIDGEPORT, CONNECTICUT
Filed May 17, 1988
Before
Honorable T. F. Gilroy Daly, CH.U.S.D.J.

Kenneth F. Fox, et al,
Plaintiffs

V. Civil No. B-88-147(TFGD)

State of Connecticut,
Defendant.

RULING ON PLAINTIFFS" MOTION OF APPOINTMENT OF COUNSEL

ON March 24,1988, the Court granted plaintiffs' original motion for appointment of

counsel. It subsequently vacated that ruling because the motion was not properly served on the defendent. Plaintiffs renewed their motion on April 18,1988, and defendant has filed an objection thereto.

The above-captioned action is brought by three individual plaintiffs. However, as both the complaint and the motion for appointment of counsel make clear, they are bringing the action on behalf of an unincorporated association, the Independent Party of Connecticut(the "Party"), formerly known as the Unaffiliated Party of Connecticut. See Complaint Para.2,3. The motion for appointment of counsel appears to contain the financial information not of the individual plaintiffs, but rather of the Party. Therefore, the Court must construe the action and the motion not as being brought by the individual plaintiffs but instead by the Party.

A court may appoint counsel for a person that is unable to obtain counsel because of poverty. 28 U.S.C.Sect.1915(d).. Those few

courts that have addressed the issue have split over whether an artificial entity may obtain in forma pauperis status.Compare Move Organization v.U.S.Dept. of Justice,555F.Supp.684,691-92(E.D. Pa.1983) ("person" under Sect. 1915 does not include artificial entites);Honolulu Lumber Co. v. American Factors, Ltd.265F.Supp.578,580-81 (D.Hawaii 1966) ("person" under Sect. 1915 does not include corporations),aff'd,403 F.2d 49 (9th Cir.1968) with S.O.U.P.,Inc.v FTC,449 F. 2d 1142,1142-43 (D.C.Cir.1971) (suggesting that in forma pauperis status could be bestowed on corporation upon showing that members of corporation were also indigent);Harlem River Consumers Co-op, Inc. v.Associated Groceries, 71 F.R.D.93,95-96 (S.D.N.Y.1976) (nonprofit corporation was "person" under Sect. 1915 where both shareholders and corporation were indigent and shareholders would not receive substantial benefit from suit); River Valley,Inc.v. Dubuque County, 63 F.R.D.123,125(N.D.Ill.1974)(nonprofit corporation allowed to proceed in forma pauperis where corporation was not a subterfuge

to avoid payment of costs and where the defendant had effectively cut off its source of funds), mandamus denied and appeal dismissed, 507 F2d 582 (8th Cir.1974). This Court is persuaded that, under the appropriate circumstances, an artificial entity may proceed in forma pauperis and counsel may be appointed for such an entity. If the entity has not been created as a subterfuge to avoid payment of costs and to obtain a court-appointed attorney, if the members of the entity would not reap substantial personal financial benefit from the suit, and the members of the entity are indigent as well as the entity itself, a court may bestow in forma pauperis status under Sect. 1915 on an artificial entity such as that in the instant action.

Plaintiffs have not made the requisite showing under Sect. 1915 for the Court to appoint counsel. The motion for appointment provides financial information for the Party and not for its members. Accordingly, the motion is DENIED without prejudice to renew on a proper showing of poverty. Dated at Bridgeport,Ct.May 17,1988

TFGD,CH.U.S.D.J.